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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

LUGO, CARLOS

ART UNIT PAPER NUMBER

3677

DATE MAILED: 04/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/682,877

Applicant(s)

MILLER ET AL.

Examiner

Carlos Lugo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 February 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-15 and 19 is/are allowed.
- 6) ☒ Claim(s) 1-10 and 16-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 18 September 2002 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. This Office Action is in response to applicant's amendment filed on February 18, 2003.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claims 6-10 and 16-18 are rejected** under 35 U.S.C. 102(b) as being anticipated by US Pat No 2,948,560 to Rop.

Regarding claim 6, Rop discloses a door latch assembly comprising a door having a door retainer projection (16). A latch handle (20) is pivotally mounted to the door. A latch actuator (14) is pivotally mounted to the door. The latch handle pivots in one direction and the latch actuator pivots in another direction. The handle is selectively positioned between an open position and a closed position.

As to claim 7, Rop discloses that the latch assembly further comprises a keeper (11). The limitation that the appliance is a dishwasher has not being considered because the appliance has not being positively claimed.

As to claim 8, Rop discloses that the latch actuator comprises a keeper engagement surface (16) wherein the keeper engagement surface disengages the keeper from the door retainer projection as the latch handle is rotated.

As to claim 9, Rop illustrates that the handle and the actuator are placed on a housing or bracket.

As to claim 10, Rop illustrates that the latch handle comprises a substantially rounded engagement portion (at the end of the handle 20) in contact with the latch actuator.

As to claim 16, Rop discloses a door latch assembly comprising an escutcheon and a latch handle (20) pivotally mounted to the escutcheon about a first longitudinal axis. A latch actuator (14) is pivotally mounted to the escutcheon about a second longitudinal axis. The latch handle contacts the latch actuator when it is rotated about the first longitudinal axis in a first direction and causing the latch actuator to rotate about the second longitudinal axis in a second direction opposite to the first direction.

As to claim 17, Rop discloses that the escutcheon includes a latch portion (16). Rop illustrates that the latch handle further comprises a closed handle stop (the end of the handle near the pivot 21).

As to claim 18, Rop illustrates that the latch actuator (14) comprises a substantially flat plate.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 1-5 are rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 2,948,560 to Rop in view of US Pat No 4,776,620 to Marks et al (Marks).

Regarding claim 1, Rop discloses a latch assembly comprising a handle (20) pivotally mounted to a door. A latch actuator (14) contacts the handle and is mounted to the door.

The handle rotates in a first direction and the actuator rotates in a second direction opposed to the first one.

A keeper (11) is engaged to a door retainer projection (16) in a closed position. The actuator is configured to disengage the keeper from the door retainer projection when the handle is actuated.

However, Rop fails to disclose that the keeper is resilient. Rop discloses that the latch actuator is resilient and the keeper rigid.

Marks teach that is known in the art to have a latch assembly with a resilient keeper (60) and a rigid actuator.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a resilient keeper and a rigid actuator, as taught by Marks, into a latching device as described by Rop, because it is mere a reversal of parts because either to have a rigid keeper and a resilient actuator, as described by Rop, or a resilient keeper and a rigid actuator, as taught by Marks, it will not affect the fact of engaging the keeper to the actuator.

As to claim 2, Rop illustrates that the handle comprises an actuator portion in sliding engagement with the latch actuator (the portion at the end of the handle).

As to claim 3, Rop illustrates that the handle further comprises a closed handle stop (the end of the handle near the pivot 21).

As to claim 4, Rop discloses that the handle rotates about a first longitudinal axis (21) and the actuator rotates about a second longitudinal axis (15).

As to claim 5, Rop illustrates that the handle and the actuator are placed on a housing or bracket.

Allowable Subject Matter

6. Claims 11-15 and 19 are allowed.

Response to Arguments

7. Applicant's arguments filed on February 18, 2003 have been fully considered but they are not persuasive.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning (Page 4 Line 33), it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

As to applicant's arguments that the rejection in view of Rop, as being modified by Marks, is inappropriate (Page 5 Line 4), Rop, as modified by Marks discloses the invention as claimed.

Claim 1 claims a latch assembly comprising a handle pivotally mounted to a door and a latch actuator that contacts the handle and is also mounted to the door. The handle rotates in a first direction and the actuator rotates in a second direction opposed to the first one. A resilient keeper is engaged to a door retainer projection in a closed position. The actuator is configured to disengage the keeper from the door retainer projection when the handle is actuated. As described above in this Office Action, Rop, as modified by Marks, disclose the invention as claimed.

As to applicant's arguments that Rop does not describe nor suggest a resilient keeper that is engaged to the door retainer projection in the door (Page 5 Line 17), Rop discloses that the latch actuator is resilient and the keeper rigid. Marks teach that is known in the art to have a latch assembly with a resilient keeper and a rigid actuator.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a resilient keeper and a rigid actuator, as taught by Marks, into a latching device as described by Rop, because it is mere a reversal of parts because either to have a rigid keeper and a resilient actuator, as described by Rop, or a resilient keeper and a rigid actuator, as taught by Marks, it will not affect the fact of engaging the keeper to the actuator.

As to applicant's arguments that Marks does not describe or suggest a latch assembly as claimed (Page 5 Lines 18-25), Marks does not have to teach these limitations, Rop already teach them. Marks is used to show that is known in the art to have a latch assembly with a resilient keeper and a rigid actuator.

As to applicant's arguments about obviousness (Page 5 Line 26 to Page 6 Line 15), the use of patents as references is not limited to what the patentees describe as their own inventions or to the problems with which they are concerned. They are part of the literature of the art, relevant for all they contain." *In re Heck*, 699 F.2d 1331, 1332-33, 216 USPQ 1038, 1039 (Fed. Cir. 1983) (quoting *In re Lemelson*, 397 F.2d 1006, 1009, 158 USPQ 275, 277 (CCPA 1968))(MPEP 2123).

The disclosures in a reference must be evaluated for what they would fairly teach one of ordinary skill in the art. *In re Snow*, 471 F.2d 1400, 176 USPQ 328 (CCPA 1973); *In re Boe*, 355 F.2d 961, 148 USPQ 507 (CCPA 1966). Specifically, in considering the teachings of a reference, it is proper to take into account not only the specific teachings of the reference, but also the inferences that one skilled in the art would reasonably have been expected to draw from the reference. *In re Preda*, 401 F.2d 825, 159 USPQ 342 (CCPA 1968); *In re Shepard*, 319 F.2d 194, 138 USPQ 148 (CCPA 1963). In addition, it is proper to take into consideration not only the teachings of the prior art, but also the level of ordinary skill in the art. *In re Luck*, 476 F.2d 650, 177 USPQ 523 (CCPA 1973). Specifically, those of ordinary skill in the art are presumed to have some knowledge of the art apart from what is expressly disclosed in the references. *In re Jacoby*, 309 F.2d 513, 135 USPQ 317 (CCPA 1962).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have a resilient keeper and a rigid actuator, as taught by Marks, into a latching device as described by Rop, because it is mere a

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design choice that a person of ordinary skill in the art would appreciate the reversal of parts.

As to applicant's arguments that Rop, as modified by Marks, fails to describe or suggest a latch assembly as claimed in claim 1 (Page 6 Line 16 to Page 7 Line 21), Rop, as modified by Marks, discloses the invention as claimed.

Claim 1 only claims a latch assembly comprising a handle pivotally mounted to a door and a latch actuator that contacts the handle and is also mounted to the door. The handle rotates in a first direction and the actuator rotates in a second direction opposed to the first one. A resilient keeper is engaged to a door retainer projection in a closed position. The actuator is configured to disengage the keeper from the door retainer projection when the handle is actuated. As described above in this Office Action, Rop, as modified by Marks, disclose the invention as claimed.

The limitations (underlined) like "a latch assembly for a door including a door retainer projection", "a handle pivotally mounted to the door for rotation about a first end" and "a latch actuator contacting said handle and mounted to the door for rotation about a second end" are consider as intended use. A recitation with respect to the manner in which an apparatus is intended to be employed does not impose any structural limitation upon the claimed apparatus, which differentiates it from a prior art reference disclosing the structural limitations of the claim. In re Pearson, 494 F.2d 1399, 181 USPQ 641 (CCPA 1974); In re Yanush, 477 F.2d 958, 177 USPQ 705 (CCPA 1973); In re Finsterwalder, 436 F.2d 1028, 168 USPQ 530 (CCPA 1971); In re Casey, 370 F.2d 576, 152 USPQ 235 (CCPA 1967); In re Otto, 312 F.2d

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937, 136 USPQ 458 (CCPA 1963); Ex parte Masham, 2 USPQ2d 1647 (BdPatApp & Inter 1987).

As to applicant's arguments regarding the rejection under section 103 to claims 6-10 (Page 7 Line 25 to Page 8 Line 16), the rejection under section 103 is withdraw but a new rejection under section 102(b) in view of Rop is made.

As to applicant's arguments regarding the rejection under section 103 to claims 16-18 (Page 9 Line 19 to Page 10 Line 12), the rejection under section 103 is withdraw but a new rejection under section 102(b) in view of Rop is made.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlos Lugo. The examiner phone number is (703)-305-9747. The fax number for correspondence before a final action is (703)-872-9326 and the fax number for correspondence after final action is (703)-872-9327. The email direction of the examiner is carlos.lugo@uspto.gov. The examiner can normally be reached on Monday to Friday from 9:30am to 6:30pm (EST). If the examiner is not available, please leave a message, including the application number and the examiner will answer the message as soon as possible.

April 1, 2003


ROBERT J. SANDY
PRIMARY EXAMINER